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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/867,581	05/31/2001	Dietmar Przytulla	2511-094	8054

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EXAMINER

MEREK, JOSEPH C

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 07/19/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 09/867,581	Applicant(s) PRZYTULLA ET AL.	
	Examiner Joseph C. Merek	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 6-13, 15, 17, 18, 29, 34-36, 38-41 and 43-45 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 6-13, 15, 17, 18, 29, 34-36, 38-41, 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Specification

The amendment filed 3/18/03 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "substantially circular or the "substantially rectangular" are not supported by the disclosure, claims or drawings. The original specification used the wording generally or nearly in relation to circular. The original specification and claims stated that the cross-section was substantially square. A square may be a rectangle all rectangles are not squares. Applicant did not appreciate at the time the invention was filed that the cross-section could be rectangular.

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4, 6-13, 15, 17, 18, 29, 38, and 44 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Regarding claims 1 and 34, it has not been adequately disclosed how the

indentation is substantially v-shaped in a plane extending substantially parallel to the longitudinal axis. The original claims support the substantially v-shaped indentation. The indentation as seen in Fig. 7 extends transverse. Regarding claims 4 and 10, it has not been adequately disclosed how the sidewall section define a substantially rectangular cross-section of the sidewall. The original disclosure used the term generally square cross-section. The original claims specified substantially square cross-section. All rectangles are not squares. This represents new matter. Regarding claims 4, 10, 15, 38, and 44 it has not been adequately disclosed how the first indentation defines a substantially circular cross-section of the sidewall. The original disclosure used the terms generally or nearly in relation to the circular cross-section. Substantially is not the same as generally or nearly. This represents new matter. These are new matter rejections. The remaining claims are included since they stem from rejected claims.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 6-13, 15, 17, 18, 29, 38, and 44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 1 and 34, it has not been adequately disclosed how the indentation is substantially v-shaped in a plane extending substantially parallel to the longitudinal axis. The original claims support the substantially v-shaped indentation. The indentation as seen in Fig. 7 extends transverse. Regarding claims 4 and 10, it has not been adequately disclosed

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how the sidewall sections define a substantially rectangular cross-section of the sidewall. The original disclosure used the term generally square cross-section. The original claims specified substantially square cross-section. All rectangles are not squares. Regarding claims 4, 10, 15, 38, and 44 is has not been adequately disclosed how the first indentation defines a substantially circular cross-section of the sidewall. The original disclosure used the terms generally or nearly in relation to the circular cross-section. Substantially is not the same as generally or nearly. It is not clear what is being claimed. The remaining claims are included since they stem from rejected claims.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-13, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Roper '899. Regarding claim 10, as it is best understood, there are angular indentations between the intersections of the sidewall sections. The indentations define a second cross-section that is different from a first portion of the sidewall that defines a first cross-section. The first cross-section is generally square and the second cross-section is generally round or nearly circular since the corners are rounded. The end wall has the recessed well with the drain/fill openings 54 or 56. These are recessed with respect to surface 51. Regarding claim 11, the second portion (the indentation) divides the first portion into upper and lower sections. Regarding claim 12 and 17, the indentation is located within the claimed percentages. Regarding claim

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13, as it is best understood, the cross section is generally square. Regarding claim 18, the protrusions are seen as 58 for stiffening the end wall. They extend vertically above the lower surrounding area.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-13, 17, 18, 34, 35, 38 and 39-41, 43, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Virog, Jr. et al. Regarding claims 10 and 39, DE '722 does not teach the claimed protrusion on the sidewall. Virog, Jr. et al as seen in Figs. 1 and 2, teaches a similar container with a indentation in the side wall. It would have been obvious to employ the indentation of Virgo, Jr. et al in the container of DE '722 to reinforce the sidewall. The cross-section in the indentation is different from the cross-section above or below the indentation. The vertical thickness of Virgo, et al varies as it extends around the container. Regarding claim 11, the indentation divides the container into upper and lower sections. Regarding claims 12 and 17, the indentation is located at about 30% of the height of the container. The about allows for variation outside of the 30-70% range. Regarding claim 13, the cross-section is substantially square which allows for variation from a true square.

Regarding claim 34, as it is best understood, the indentation is v-shaped. The substantially allows for variation from exactly v-shaped. Regarding claim 35, see Fig. 4, where the indentation 16 is shown and is shallowest at a point intermediate the corner sections as seen at 11 and 12. Regarding claim 38, as it is best understood, the cross-section of the indentation is generally circular since it has rounded corners. The cross-section of the container outside of the indentation is substantially square which allows for variation from a perfect square. Regarding claims 40 and 41, the thickness is greatest in the corners since the indentation tapers in the sidewall as seen in Fig. 1. Regarding claim 42, as it is best understood that the thickness is the smallest intermediate the corner sections. Regarding claim 18, see Fig. 1b of De '722 where 44 is the protrusion in the end wall. Regarding claim 43, the open claim language allows for more than one deepest location. The corners have locations that are deeper than the location on the sidewalls. Regarding claim 44, as it is best understood, the first cross-section is generally square and the second cross-section is generally round or nearly circular. Regarding claims 34, and 45, see Fig. 4, where it is shown by Virgo, Jr. et al that the indentation of the modified container of DE '722 is deeper in the corner at 20 then the adjacent area on the side of the container and the indentation tapers into the sidewall.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Virog, Jr. et al. as applied to claim 1 above and further in view of Snyder et al. Regarding claim 7, the modified container of DE '722 does not teach the longitudinal indentation. Snyder et al as seen in Fig. 1, teaches a sidewall corrugated in both the

circumferential and longitudinal directions. It would have been obvious to employ the longitudinal indentations of Snyder et al in the modified container of DE '722 to prevent the sidewall bulging when stacked or to allow for a thinner side wall as taught by Snyder et al in Col. 5, lines 32-43.

Claims 1, 4, 6, 8-13, 15, 17, 18, 29, and 34-36, 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Sugiura et al. Regarding claims 1, 10, 34 and 45, as they are best understood, DE '722 does not teach the sidewall indentations. Sugiura et al as see in Figs. 1 and 2, teaches an indentation in the sidewall that is deeper in the corners. It would have been obvious to employ the indentation of Sugiura et al in the container of DE '722 to reinforce the sidewall. The indentation in the modified container of DE '722 is V-shaped. Regarding claims 4 and 38, as it is best understood, the first cross-section is generally square and the second cross-section is generally round or nearly circular. Regarding claims 6, 12, and 17, the indentation is found in the specified height range. Regarding claim 8, see Figs. 1a of DE 722 where 60 is the ring. Regarding claims 9 and 18, see Fig. 1b of DE '722, where 44 is the rib in the end wall. Regarding claim 11, the second portion divides the first portion into upper and lower sections. Regarding claim 13, as it is best understood, the first cross-section is generally square. Regarding claim 15, as it is best understood, the indentation is V-shaped and the second cross-section is generally round or nearly circular. Regarding claim 29, the indentations are deepest in the corners and become shallower as they transition into the sidewalls. Regarding claim 35, the bottom of the indentation is shallowest intermediate the corners. Regarding claim 36, as it is best

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understood, the indentation is V-shaped and deepest in the corners. Regarding claim 38, as it is best understood, the first cross-section is substantially square which allows for variation from a perfect square and the indentation is generally circular since it has rounded corners as seen in Fig. 2 of Sugiura et al

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE '722 in view of Sugiura et al as applied to claim 1 above, and further in view of Snyder et al. Regarding claim 7, the modified container of DE '722 does not teach the longitudinal indentation. Snyder et al as seen in Fig. 1, teaches a sidewall corrugated in both the circumferential and longitudinal directions. It would have been obvious to employ the longitudinal indentations of Snyder et al in the modified container of DE '722 to prevent the sidewall bulging when stacked or to allow for a thinner side wall as taught by Snyder et al in Col. 5, lines 32-43.

Response to Arguments

Applicant's arguments filed 12/24/03 have been fully considered but they are not persuasive. Applicant's changes to the claim language do not overcome the prior art. The previous rejections remain applicable since the amended claims include new matter. The addition of the limitation "substantially" does not overcome the prior art. Substantially is a broad term and allows for variations from being exactly square or circular. The original claims specified that the angular indentations are substantially v-shaped. The substantially v-shaped limitation allows for the variations, which includes

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the shapes as seen in the applied references. The v-shape of the instant invention is not a perfect v and the substantially allows for variation from a true v-shape. The v-shape of the instant invention varies in height in the corners.

Conclusion

The previous office action inadvertently included claims 19 and 20 in 103 rejection of DE '722 in view of Sugiura et al. These claims were withdrawn in the restriction 7/5/02. Also see applicant's response dated where claims 19 and 20 are not included as reading on the election group. The office action summary correctly listed the pending claims.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weiler et al (US 4,298,045) is cited for teaching a container that has a square cross-section with two circumferential indentations.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

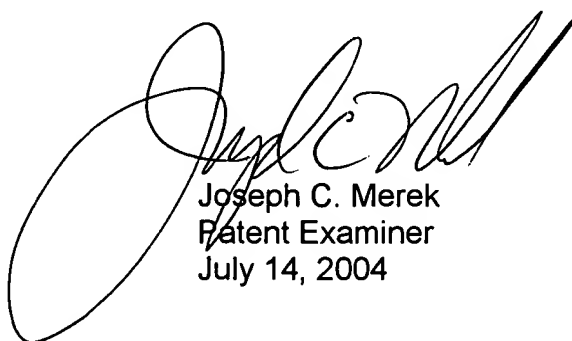
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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C. Merek whose telephone number is (703) 305-0644. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on (703) 308-2572. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Joseph C. Merek
Patent Examiner
July 14, 2004